

HOUSE BILL NO. 429

INTRODUCED BY STRIZICH, DOHERTY, J. RICE, VOGEL,
RYAN, D. BROWN, DOLEZAL, CHRISTIAENS, CLARK,
MCCULLOCH, FAGG, SCHYE

IN THE HOUSE

FEBRUARY 2, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 15, 1993	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 16, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 17, 1993	ENGROSSING REPORT.
FEBRUARY 18, 1993	THIRD READING, PASSED. AYES, 76; NOES, 21.
FEBRUARY 19, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 20, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 18, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 19, 1993	SECOND READING, CONCURRED IN.
MARCH 20, 1993	ON MOTION, PASS CONSIDERATION FOR THE DAY.
MARCH 22, 1993	THIRD READING, CONCURRED IN. AYES, 42; NOES, 6.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 1, 1993

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 2, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *House Bill No. 429*
 2 INTRODUCED BY *Deputy Clerk*
 3 *Dave Brown* *Deputy* *Christiane Clark*

4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF
 5 CRIMINAL PRODUCTION OR MANUFACTURE OF DANGEROUS DRUGS;
 6 SEPARATING THE OFFENSE FROM THE OFFENSE OF CRIMINAL SALE OF
 7 DANGEROUS DRUGS; PROVIDING PENALTIES FOR THE PRODUCTION OR
 8 MANUFACTURE OF VARIOUS TYPES OF DANGEROUS DRUGS; ELIMINATING
 9 THE REQUIREMENT THAT THE FIRST 2 YEARS OF A PRISON SENTENCE
 10 MAY NOT BE DEFERRED OR SUSPENDED; AND AMENDING SECTIONS
 11 41-5-206 AND 45-9-101, MCA."

12
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 NEW SECTION. **Section 1.** Criminal production or
 15 manufacture of dangerous drugs. (1) A person commits the
 16 offense of criminal production or manufacture of dangerous
 17 drugs if the person knowingly or purposely produces,
 18 manufactures, prepares, cultivates, compounds, or processes
 19 a dangerous drug, as defined in 50-32-101.

20 (2) A person convicted of criminal production or
 21 manufacture of a narcotic drug, as defined in
 22 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19),
 23 shall be imprisoned in the state prison for a term of not
 24 less than 5 years or more than life and may be fined not
 25 more than \$50,000, except as provided in 46-18-222.

1 (3) A person convicted of criminal production or
 2 manufacture of a dangerous drug included in Schedule I of
 3 50-32-222 or Schedule II of 50-32-224, except marijuana or
 4 tetrahydrocannabinol, who has a prior conviction that has
 5 become final for criminal production or manufacture of a
 6 Schedule I or Schedule II drug shall be imprisoned in the
 7 state prison for a term of not less than 20 years or more
 8 than life and may be fined not more than \$50,000, except as
 9 provided in 46-18-222. Upon a third or subsequent conviction
 10 that has become final for criminal production or manufacture
 11 of a Schedule I or Schedule II drug, the person shall be
 12 imprisoned in the state prison for a term of not less than
 13 40 years or more than life and may be fined not more than
 14 \$50,000, except as provided in 46-18-222.

15 (4) A person convicted of criminal production or
 16 manufacture of marijuana, tetrahydrocannabinol, or a
 17 dangerous drug not referred to in subsections (2) and (3)
 18 shall be imprisoned in the state prison for a term not to
 19 exceed 10 years and may be fined not more than \$50,000,
 20 except that if the dangerous drug is marijuana and the total
 21 weight is more than a pound or the number of plants is more
 22 than 30, the person shall be imprisoned in the state prison
 23 for not less than 2 years or more than life and may be fined
 24 not more than \$50,000. "Weight" means the weight of the
 25 plant and includes the leaves and stem structure but does

not include the root structure. A person convicted under this subsection who has a prior conviction that has become final for criminal production or manufacture of a drug under this subsection shall be imprisoned in the state prison for a term not to exceed twice that authorized for a first offense under this subsection and may be fined not more than \$100,000.

(5) Practitioners and agents under their supervision acting in the course of a professional practice, as defined in 50-32-101, are exempt from this section.

Section 2. Section 41-5-206, MCA, is amended to read:

"41-5-206. Transfer to criminal court. (1) After a petition has been filed alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) (i) the youth charged was 12 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act would constitute sexual intercourse without consent as defined in 45-5-503, deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult; or

(ii) the youth charged was 16 years of age or more at

the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(A) negligent homicide as defined in 45-5-104;

(B) arson as defined in 45-6-103;

(C) aggravated or felony assault as defined in 45-5-202;

(D) robbery as defined in 45-5-401;

(E) burglary or aggravated burglary as defined in 45-6-204;

(F) aggravated kidnapping as defined in 45-5-303;

(G) possession of explosives as defined in 45-8-335;

(H) criminal sale of dangerous drugs as included defined in 45-9-101;

(I) criminal production or manufacture of dangerous drugs as defined in [section 1];

~~††(J)~~ attempt, as defined in 45-4-103, of any of the acts enumerated in subsections (1)(a)(ii)(A) through ~~††(a)†††(H)~~ (1)(a)(ii)(I);

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing will be conducted by the youth court without a jury;

(c) notice in writing of the time, place, and purpose of the hearing is given to the youth, his counsel, and his parents, guardian, or custodian at least 10 days before the

1 hearing; and

2 (d) the court finds upon the hearing of all relevant
3 evidence that there is probable cause to believe that:

4 (i) the youth committed the delinquent act alleged;

5 (ii) the seriousness of the offense and the protection
6 of the community require treatment of the youth beyond that
7 afforded by juvenile facilities; and

8 (iii) the alleged offense was committed in an
9 aggressive, violent, or premeditated manner.

10 (2) In transferring the matter of prosecution to the
11 district court, the court may also consider the following
12 factors:

13 (a) the sophistication and maturity of the youth,
14 determined by consideration of his the youth's home,
15 environmental situation, and emotional attitude and pattern
16 of living;

17 (b) the record and previous history of the youth,
18 including previous contacts with the youth court, law
19 enforcement agencies, youth courts in other jurisdictions,
20 prior periods of probation, and prior commitments to
21 juvenile institutions. However, lack of a prior juvenile
22 history with youth courts will not of itself be grounds for
23 denying the transfer.

24 (3) The court shall grant the motion to transfer if the
25 youth was 16 years old or older at the time of the conduct

1 alleged to be unlawful and the unlawful act would constitute
2 deliberate homicide as defined in 45-5-102, mitigated
3 deliberate homicide as defined in 45-5-103, or the attempt,
4 as defined in 45-4-103, of either deliberate or mitigated
5 deliberate homicide if the act had been committed by an
6 adult.

7 (4) Upon transfer to district court, the judge shall
8 make written findings of the reasons why the jurisdiction of
9 the youth court was waived and the case transferred to
10 district court.

11 (5) The transfer terminates the jurisdiction of the
12 youth court over the youth with respect to the acts alleged
13 in the petition. A youth may not be prosecuted in the
14 district court for a criminal offense originally subject to
15 the jurisdiction of the youth court unless the case has been
16 transferred as provided in this section.

17 (6) Upon order of the youth court transferring the case
18 to the district court, the county attorney shall file the
19 information against the youth without unreasonable delay.

20 (7) Any offense not enumerated in subsection (1) that
21 arises during the commission of a crime enumerated in
22 subsection (1) may be:

23 (a) tried in youth court;

24 (b) transferred to district court with an offense
25 enumerated in subsection (1), upon motion of the county

attorney and order of the youth court judge.

(8) If a youth is found guilty in district court of any of the offenses transferred by the youth court and is sentenced to the state prison, ~~his~~ the commitment must be to the department of corrections and human services. The department shall confine the youth in whatever institution it considers proper, including a state youth correctional facility under the procedures of 52-5-111; however, no youth under 16 years of age may be confined in the state prison.

(9) A youth whose case is transferred to district court may not be detained or otherwise placed in a jail or other adult detention facility before final disposition of his case unless:

(a) alternative facilities do not provide adequate security; and

(b) the youth is kept in an area that provides physical, as well as sight and sound, separation from adults accused or convicted of criminal offenses."

Section 3. Section 45-9-101, MCA, is amended to read:

"45-9-101. Criminal sale of dangerous drugs. (1) A person commits the offense of criminal sale of dangerous drugs if he the person sells, barter, exchanges, gives away, or offers to sell, barter, exchange, or give away or ~~manufactures, prepares, cultivates, compounds, or--processes~~ any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal sale of a narcotic drug, as defined in 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(3) A person convicted of criminal sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or ~~tetrahydrocannabinols~~ tetrahydrocannabinol, who has a prior conviction for criminal sale of such a drug shall be imprisoned in the state prison for a term of not less than 10 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222. Upon a third or subsequent conviction for criminal sale of such a drug, he the person shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(4) A person convicted of criminal sale of dangerous drugs not otherwise provided for in subsection (2), (3), or (5) shall be imprisoned in the state prison for a term of not less than 1 year or more than life or be fined an amount of not more than \$50,000, or both.

(5) A person who was an adult at the time of sale and

1 who is convicted of criminal sale of dangerous drugs to a
2 minor shall be sentenced as follows:

3 (a) If convicted pursuant to subsection (2), the person
4 shall be imprisoned in the state prison for not less than 4
5 years or more than life and may be fined not more than
6 \$50,000, except as provided in 46-18-222.

7 (b) If convicted of the sale of a dangerous drug
8 included in Schedule I or Schedule II pursuant to 50-32-222
9 or 50-32-224 and if previously convicted of such a sale, the
10 person shall be imprisoned in the state prison for not less
11 than 20 years or more than life and may be fined not more
12 than \$50,000, except as provided in 46-18-222.

13 (c) If convicted of the sale of a dangerous drug
14 included in Schedule I or Schedule II pursuant to 50-32-222
15 or 50-32-224 and if previously convicted of two or more such
16 sales, the person shall be imprisoned in the state prison
17 for not less than 40 years or more than life and may be
18 fined not more than \$50,000, except as provided in
19 46-18-222.

20 (d) If convicted pursuant to subsection (4), the person
21 shall be imprisoned in the state prison for not less than 2
22 years or more than life and may be fined not more than
23 \$50,000, except as provided in 46-18-222.

24 (6) Practitioners and agents under their supervision
25 acting in the course of a professional practice, as defined

1 by 50-32-101, are exempt from this section."

2 NEW SECTION. **Section 4.** Codification instruction.
3 [Section 1] is intended to be codified as an integral part
4 of Title 45, chapter 9, part 1, and the provisions of Title
5 45 apply to [section 1].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0429, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act creating the offense of criminal production or manufacture of dangerous drugs; separating the offense from the offense of criminal sale of dangerous drugs; eliminating the requirement that the first two years of a prison sentence may not be deferred or suspended.

ASSUMPTIONS:

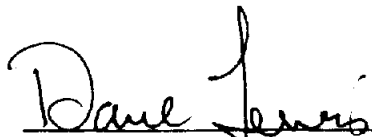
1. It is assumed that the proposal will have no material fiscal impact on the Department of Corrections and Human Services or on other state agencies.
2. It is assumed that the proposed bill will have no material fiscal impact on local governments.


FISCAL IMPACT:

No material impact over the biennium.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

It is assumed that there will be no material fiscal impact on local governments.

 2-8-93
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2-9-93
WILLIAM "BILL" STRIZICH, PRIMARY SPONSOR DATE

Fiscal Note for HB0429, as introduced

HB 429

APPROVED BY COMMITTEE
ON JUDICIARY

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INTRODUCED BY

HOUSE BILL NO. 429
Deputy Sec. Vogel
Dave Brown DeLoach Christine Clark
A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF
CRIMINAL PRODUCTION OR MANUFACTURE OF DANGEROUS DRUGS;
SEPARATING THE OFFENSE FROM THE OFFENSE OF CRIMINAL SALE OF
DANGEROUS DRUGS; PROVIDING PENALTIES FOR THE PRODUCTION OR
MANUFACTURE OF VARIOUS TYPES OF DANGEROUS DRUGS; ELIMINATING
THE REQUIREMENT THAT THE FIRST 2 YEARS OF A PRISON SENTENCE
MAY NOT BE DEFERRED OR SUSPENDED; AND AMENDING SECTIONS
41-5-206 AND 45-9-101, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Criminal production or
manufacture of dangerous drugs. (1) A person commits the
offense of criminal production or manufacture of dangerous
drugs if the person knowingly or purposely produces,
manufactures, prepares, cultivates, compounds, or processes
a dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal production or
manufacture of a narcotic drug, as defined in
50-32-101(18)(d), or an opiate, as defined in 50-32-101(19),
shall be imprisoned in the state prison for a term of not
less than 5 years or more than life and may be fined not
more than \$50,000, except as provided in 46-18-222.

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(3) A person convicted of criminal production or
manufacture of a dangerous drug included in Schedule I of
50-32-222 or Schedule II of 50-32-224, except marijuana or
tetrahydrocannabinol, who has a prior conviction that has
become final for criminal production or manufacture of a
Schedule I or Schedule II drug shall be imprisoned in the
state prison for a term of not less than 20 years or more
than life and may be fined not more than \$50,000, except as
provided in 46-18-222. Upon a third or subsequent conviction
that has become final for criminal production or manufacture
of a Schedule I or Schedule II drug, the person shall be
imprisoned in the state prison for a term of not less than
40 years or more than life and may be fined not more than
\$50,000, except as provided in 46-18-222.

(4) A person convicted of criminal production or
manufacture of marijuana, tetrahydrocannabinol, or a
dangerous drug not referred to in subsections (2) and (3)
shall be imprisoned in the state prison for a term not to
exceed 10 years and may be fined not more than \$50,000,
except that if the dangerous drug is marijuana and the total
weight is more than a pound or the number of plants is more
than 30, the person shall be imprisoned in the state prison
for not less than 2 years or more than life and may be fined
not more than \$50,000. "Weight" means the weight of the
plant and includes the leaves and stem structure but does

not include the root structure. A person convicted under this subsection who has a prior conviction that has become final for criminal production or manufacture of a drug under this subsection shall be imprisoned in the state prison for a term not to exceed twice that authorized for a first offense under this subsection and may be fined not more than \$100,000.

(5) Practitioners and agents under their supervision acting in the course of a professional practice, as defined in 50-32-101, are exempt from this section.

Section 2. Section 41-5-206, MCA, is amended to read:

"41-5-206. Transfer to criminal court. (1) After a petition has been filed alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) (i) the youth charged was 12 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act would constitute sexual intercourse without consent as defined in 45-5-503, deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult; or

(ii) the youth charged was 16 years of age or more at

the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(A) negligent homicide as defined in 45-5-104;

(B) arson as defined in 45-6-103;

(C) aggravated or felony assault as defined in 45-5-202;

(D) robbery as defined in 45-5-401;

(E) burglary or aggravated burglary as defined in 45-6-204;

(F) aggravated kidnapping as defined in 45-5-303;

(G) possession of explosives as defined in 45-8-335;

(H) criminal sale of dangerous drugs as ~~included~~ defined in 45-9-101;

(I) criminal production or manufacture of dangerous drugs as defined in [section 1];

~~+~~(J) attempt, as defined in 45-4-103, of any of the acts enumerated in subsections (1)(a)(ii)(A) through ~~+~~(1)(a)(ii)(I);

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing will be conducted by the youth court without a jury;

(c) notice in writing of the time, place, and purpose of the hearing is given to the youth, his counsel, and his parents, guardian, or custodian at least 10 days before the

1 hearing; and

2 (d) the court finds upon the hearing of all relevant
3 evidence that there is probable cause to believe that:

4 (i) the youth committed the delinquent act alleged;

5 (ii) the seriousness of the offense and the protection
6 of the community require treatment of the youth beyond that
7 afforded by juvenile facilities; and

8 (iii) the alleged offense was committed in an
9 aggressive, violent, or premeditated manner.

10 (2) In transferring the matter of prosecution to the
11 district court, the court may also consider the following
12 factors:

13 (a) the sophistication and maturity of the youth,
14 determined by consideration of his the youth's home,
15 environmental situation, and emotional attitude and pattern
16 of living;

17 (b) the record and previous history of the youth,
18 including previous contacts with the youth court, law
19 enforcement agencies, youth courts in other jurisdictions,
20 prior periods of probation, and prior commitments to
21 juvenile institutions. However, lack of a prior juvenile
22 history with youth courts will not of itself be grounds for
23 denying the transfer.

24 (3) The court shall grant the motion to transfer if the
25 youth was 16 years old or older at the time of the conduct

1 alleged to be unlawful and the unlawful act would constitute
2 deliberate homicide as defined in 45-5-102, mitigated
3 deliberate homicide as defined in 45-5-103, or the attempt,
4 as defined in 45-4-103, of either deliberate or mitigated
5 deliberate homicide if the act had been committed by an
6 adult.

7 (4) Upon transfer to district court, the judge shall
8 make written findings of the reasons why the jurisdiction of
9 the youth court was waived and the case transferred to
10 district court.

11 (5) The transfer terminates the jurisdiction of the
12 youth court over the youth with respect to the acts alleged
13 in the petition. A youth may not be prosecuted in the
14 district court for a criminal offense originally subject to
15 the jurisdiction of the youth court unless the case has been
16 transferred as provided in this section.

17 (6) Upon order of the youth court transferring the case
18 to the district court, the county attorney shall file the
19 information against the youth without unreasonable delay.

20 (7) Any offense not enumerated in subsection (1) that
21 arises during the commission of a crime enumerated in
22 subsection (1) may be:

23 (a) tried in youth court;

24 (b) transferred to district court with an offense
25 enumerated in subsection (1), upon motion of the county

1 attorney and order of the youth court judge.

2 (8) If a youth is found guilty in district court of any
3 of the offenses transferred by the youth court and is
4 sentenced to the state prison, his the commitment must be to
5 the department of corrections and human services. The
6 department shall confine the youth in whatever institution
7 it considers proper, including a state youth correctional
8 facility under the procedures of 52-5-111; however, no youth
9 under 16 years of age may be confined in the state prison.

10 (9) A youth whose case is transferred to district court
11 may not be detained or otherwise placed in a jail or other
12 adult detention facility before final disposition of his
13 case unless:

14 (a) alternative facilities do not provide adequate
15 security; and

16 (b) the youth is kept in an area that provides
17 physical, as well as sight and sound, separation from adults
18 accused or convicted of criminal offenses."

19 **Section 3.** Section 45-9-101, MCA, is amended to read:

20 "45-9-101. Criminal sale of dangerous drugs. (1) A
21 person commits the offense of criminal sale of dangerous
22 drugs if he the person sells, barter, exchanges, gives
23 away, or offers to sell, barter, exchange, or give away or
24 ~~manufactures, prepares, cultivates, compounds, or processes~~
25 any dangerous drug, as defined in 50-32-101.

1 (2) A person convicted of criminal sale of a narcotic
2 drug, as defined in 50-32-101(18)(d), or an opiate, as
3 defined in 50-32-101(19), shall be imprisoned in the state
4 prison for a term of not less than 2 years or more than life
5 and may be fined not more than \$50,000, except as provided
6 in 46-18-222.

7 (3) A person convicted of criminal sale of a dangerous
8 drug included in Schedule I or Schedule II pursuant to
9 50-32-222 or 50-32-224, except marijuana or
10 tetrahydrocannabinols tetrahydrocannabinol, who has a prior
11 conviction for criminal sale of such a drug shall be
12 imprisoned in the state prison for a term of not less than
13 10 years or more than life and may be fined not more than
14 \$50,000, except as provided in 46-18-222. Upon a third or
15 subsequent conviction for criminal sale of such a drug, he
16 the person shall be imprisoned in the state prison for a
17 term of not less than 20 years or more than life and may be
18 fined not more than \$50,000, except as provided in
19 46-18-222.

20 (4) A person convicted of criminal sale of dangerous
21 drugs not otherwise provided for in subsection (2), (3), or
22 (5) shall be imprisoned in the state prison for a term of
23 not less than 1 year or more than life or be fined an amount
24 of not more than \$50,000, or both.

25 (5) A person who was an adult at the time of sale and

1 who is convicted of criminal sale of dangerous drugs to a
2 minor shall be sentenced as follows:

3 (a) If convicted pursuant to subsection (2), the person
4 shall be imprisoned in the state prison for not less than 4
5 years or more than life and may be fined not more than
6 \$50,000, except as provided in 46-18-222.

7 (b) If convicted of the sale of a dangerous drug
8 included in Schedule I or Schedule II pursuant to 50-32-222
9 or 50-32-224 and if previously convicted of such a sale, the
10 person shall be imprisoned in the state prison for not less
11 than 20 years or more than life and may be fined not more
12 than \$50,000, except as provided in 46-18-222.

13 (c) If convicted of the sale of a dangerous drug
14 included in Schedule I or Schedule II pursuant to 50-32-222
15 or 50-32-224 and if previously convicted of two or more such
16 sales, the person shall be imprisoned in the state prison
17 for not less than 40 years or more than life and may be
18 fined not more than \$50,000, except as provided in
19 46-18-222.

20 (d) If convicted pursuant to subsection (4), the person
21 shall be imprisoned in the state prison for not less than 2
22 years or more than life and may be fined not more than
23 \$50,000, except as provided in 46-18-222.

24 (6) Practitioners and agents under their supervision
25 acting in the course of a professional practice, as defined

1 by 50-32-101, are exempt from this section."

2 NEW SECTION. **Section 4. Codification instruction.**
3 [Section 1] is intended to be codified as an integral part
4 of Title 45, chapter 9, part 1, and the provisions of Title
5 45 apply to [section 1].

-End-

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INTRODUCED BY

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of a Schedule I or Schedule II drug, the person shall be
imprisoned in the state prison for a term of not less than
40 years or more than life and may be fined not more than
\$50,000, except as provided in 46-18-222.

(4) A person convicted of criminal production or
manufacture of marijuana, tetrahydrocannabinol, or a
dangerous drug not referred to in subsections (2) and (3)
shall be imprisoned in the state prison for a term not to
exceed 10 years and may be fined not more than \$50,000,
except that if the dangerous drug is marijuana and the total
weight is more than a pound or the number of plants is more
than 30, the person shall be imprisoned in the state prison
for not less than 2 years or more than life and may be fined
not more than \$50,000. "Weight" means the weight of the
plant and includes the leaves and stem structure but does

not include the root structure. A person convicted under this subsection who has a prior conviction that has become final for criminal production or manufacture of a drug under this subsection shall be imprisoned in the state prison for a term not to exceed twice that authorized for a first offense under this subsection and may be fined not more than \$100,000.

(5) Practitioners and agents under their supervision acting in the course of a professional practice, as defined in 50-32-101, are exempt from this section.

Section 2. Section 41-5-206, MCA, is amended to read:

***41-5-206. Transfer to criminal court.** (1) After a petition has been filed alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) (i) the youth charged was 12 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act would constitute sexual intercourse without consent as defined in 45-5-503, deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult; or

(ii) the youth charged was 16 years of age or more at

the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(A) negligent homicide as defined in 45-5-104;

(B) arson as defined in 45-6-103;

(C) aggravated or felony assault as defined in 45-5-202;

(D) robbery as defined in 45-5-401;

(E) burglary or aggravated burglary as defined in 45-6-204;

(F) aggravated kidnapping as defined in 45-5-303;

(G) possession of explosives as defined in 45-8-335;

(H) criminal sale of dangerous drugs as included defined in 45-9-101;

(I) criminal production or manufacture of dangerous drugs as defined in [section 1];

~~{(J)}~~ attempt, as defined in 45-4-103, of any of the acts enumerated in subsections (1)(a)(ii)(A) through ~~{(a)}{ii}{(H)}~~ (1)(a)(ii)(I);

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing will be conducted by the youth court without a jury;

(c) notice in writing of the time, place, and purpose of the hearing is given to the youth, his counsel, and his parents, guardian, or custodian at least 10 days before the

1 hearing; and

2 (d) the court finds upon the hearing of all relevant
3 evidence that there is probable cause to believe that:

4 (i) the youth committed the delinquent act alleged;

5 (ii) the seriousness of the offense and the protection
6 of the community require treatment of the youth beyond that
7 afforded by juvenile facilities; and

8 (iii) the alleged offense was committed in an
9 aggressive, violent, or premeditated manner.

10 (2) In transferring the matter of prosecution to the
11 district court, the court may also consider the following
12 factors:

13 (a) the sophistication and maturity of the youth,
14 determined by consideration of his the youth's home,
15 environmental situation, and emotional attitude and pattern
16 of living;

17 (b) the record and previous history of the youth,
18 including previous contacts with the youth court, law
19 enforcement agencies, youth courts in other jurisdictions,
20 prior periods of probation, and prior commitments to
21 juvenile institutions. However, lack of a prior juvenile
22 history with youth courts will not of itself be grounds for
23 denying the transfer.

24 (3) The court shall grant the motion to transfer if the
25 youth was 16 years old or older at the time of the conduct

1 alleged to be unlawful and the unlawful act would constitute
2 deliberate homicide as defined in 45-5-102, mitigated
3 deliberate homicide as defined in 45-5-103, or the attempt,
4 as defined in 45-4-103, of either deliberate or mitigated
5 deliberate homicide if the act had been committed by an
6 adult.

7 (4) Upon transfer to district court, the judge shall
8 make written findings of the reasons why the jurisdiction of
9 the youth court was waived and the case transferred to
10 district court.

11 (5) The transfer terminates the jurisdiction of the
12 youth court over the youth with respect to the acts alleged
13 in the petition. A youth may not be prosecuted in the
14 district court for a criminal offense originally subject to
15 the jurisdiction of the youth court unless the case has been
16 transferred as provided in this section.

17 (6) Upon order of the youth court transferring the case
18 to the district court, the county attorney shall file the
19 information against the youth without unreasonable delay.

20 (7) Any offense not enumerated in subsection (1) that
21 arises during the commission of a crime enumerated in
22 subsection (1) may be:

23 (a) tried in youth court;

24 (b) transferred to district court with an offense
25 enumerated in subsection (1), upon motion of the county

attorney and order of the youth court judge.

(8) If a youth is found guilty in district court of any of the offenses transferred by the youth court and is sentenced to the state prison, his the commitment must be to the department of corrections and human services. The department shall confine the youth in whatever institution it considers proper, including a state youth correctional facility under the procedures of 52-5-111; however, no youth under 16 years of age may be confined in the state prison.

(9) A youth whose case is transferred to district court may not be detained or otherwise placed in a jail or other adult detention facility before final disposition of his case unless:

(a) alternative facilities do not provide adequate security; and

(b) the youth is kept in an area that provides physical, as well as sight and sound, separation from adults accused or convicted of criminal offenses."

Section 3. Section 45-9-101, MCA, is amended to read:

"45-9-101. Criminal sale of dangerous drugs. (1) A person commits the offense of criminal sale of dangerous drugs if he the person sells, barter, exchanges, gives away, or offers to sell, barter, exchange, or give away or manufactures, prepares, cultivates, compounds, or--processes any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal sale of a narcotic drug, as defined in 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(3) A person convicted of criminal sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinols tetrahydrocannabinol, who has a prior conviction for criminal sale of such a drug shall be imprisoned in the state prison for a term of not less than 10 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222. Upon a third or subsequent conviction for criminal sale of such a drug, he the person shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(4) A person convicted of criminal sale of dangerous drugs not otherwise provided for in subsection (2), (3), or (5) shall be imprisoned in the state prison for a term of not less than 1 year or more than life or be fined an amount of not more than \$50,000, or both.

(5) A person who was an adult at the time of sale and

1 who is convicted of criminal sale of dangerous drugs to a
2 minor shall be sentenced as follows:

3 (a) If convicted pursuant to subsection (2), the person
4 shall be imprisoned in the state prison for not less than 4
5 years or more than life and may be fined not more than
6 \$50,000, except as provided in 46-18-222.

7 (b) If convicted of the sale of a dangerous drug
8 included in Schedule I or Schedule II pursuant to 50-32-222
9 or 50-32-224 and if previously convicted of such a sale, the
10 person shall be imprisoned in the state prison for not less
11 than 20 years or more than life and may be fined not more
12 than \$50,000, except as provided in 46-18-222.

13 (c) If convicted of the sale of a dangerous drug
14 included in Schedule I or Schedule II pursuant to 50-32-222
15 or 50-32-224 and if previously convicted of two or more such
16 sales, the person shall be imprisoned in the state prison
17 for not less than 40 years or more than life and may be
18 fined not more than \$50,000, except as provided in
19 46-18-222.

20 (d) If convicted pursuant to subsection (4), the person
21 shall be imprisoned in the state prison for not less than 2
22 years or more than life and may be fined not more than
23 \$50,000, except as provided in 46-18-222.

24 (6) Practitioners and agents under their supervision
25 acting in the course of a professional practice, as defined

1 by 50-32-101, are exempt from this section."

2 NEW SECTION. Section 4. Codification instruction.
3 [Section 1] is intended to be codified as an integral part
4 of Title 45, chapter 9, part 1, and the provisions of Title
5 45 apply to [section 1].

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 17, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 429 (first reading copy -- blue), respectfully report that House Bill No. 429 be amended as follows and as so amended be concurred in.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 2, line 24.
Following: "weight of the"
Insert: "dry"

-END-

M Amd. Coord.
W Sec. of Senate

Yellowtail
Senator Carrying Bill

SENATE
HB 429
601242SC.Sma

HOUSE BILL NO. 429

INTRODUCED BY STRIZICH, DOHERTY, J. RICE, VOGEL,

RYAN, D. BROWN, DOLEZAL, CHRISTIAENS, CLARK,

MCCULLOCH, FAGG, SCHYE

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF CRIMINAL PRODUCTION OR MANUFACTURE OF DANGEROUS DRUGS; SEPARATING THE OFFENSE FROM THE OFFENSE OF CRIMINAL SALE OF DANGEROUS DRUGS; PROVIDING PENALTIES FOR THE PRODUCTION OR MANUFACTURE OF VARIOUS TYPES OF DANGEROUS DRUGS; ELIMINATING THE REQUIREMENT THAT THE FIRST 2 YEARS OF A PRISON SENTENCE MAY NOT BE DEFERRED OR SUSPENDED; AND AMENDING SECTIONS 41-5-206 AND 45-9-101, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Criminal production or manufacture of dangerous drugs. (1) A person commits the offense of criminal production or manufacture of dangerous drugs if the person knowingly or purposely produces, manufactures, prepares, cultivates, compounds, or processes a dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal production or manufacture of a narcotic drug, as defined in 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not

less than 5 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(3) A person convicted of criminal production or manufacture of a dangerous drug included in Schedule I of 50-32-222 or Schedule II of 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction that has become final for criminal production or manufacture of a Schedule I or Schedule II drug shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222. Upon a third or subsequent conviction that has become final for criminal production or manufacture of a Schedule I or Schedule II drug, the person shall be imprisoned in the state prison for a term of not less than 40 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(4) A person convicted of criminal production or manufacture of marijuana, tetrahydrocannabinol, or a dangerous drug not referred to in subsections (2) and (3) shall be imprisoned in the state prison for a term not to exceed 10 years and may be fined not more than \$50,000, except that if the dangerous drug is marijuana and the total weight is more than a pound or the number of plants is more than 30, the person shall be imprisoned in the state prison for not less than 2 years or more than life and may be fined

not more than \$50,000. "Weight" means the weight of the DRY plant and includes the leaves and stem structure but does not include the root structure. A person convicted under this subsection who has a prior conviction that has become final for criminal production or manufacture of a drug under this subsection shall be imprisoned in the state prison for a term not to exceed twice that authorized for a first offense under this subsection and may be fined not more than \$100,000.

(5) Practitioners and agents under their supervision acting in the course of a professional practice, as defined in 50-32-101, are exempt from this section.

Section 2. Section 41-5-206, MCA, is amended to read:

"41-5-206. Transfer to criminal court. (1) After a petition has been filed alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) (i) the youth charged was 12 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act would constitute sexual intercourse without consent as defined in 45-5-503, deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the

act had been committed by an adult; or

(ii) the youth charged was 16 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(A) negligent homicide as defined in 45-5-104;

(B) arson as defined in 45-6-103;

(C) aggravated or felony assault as defined in 45-5-202;

(D) robbery as defined in 45-5-401;

(E) burglary or aggravated burglary as defined in 45-6-204;

(F) aggravated kidnapping as defined in 45-5-303;

(G) possession of explosives as defined in 45-8-335;

(H) criminal sale of dangerous drugs as included defined in 45-9-101;

(I) criminal production or manufacture of dangerous drugs as defined in [section 1];

~~†††(J)~~ attempt, as defined in 45-4-103, of any of the acts enumerated in subsections (1)(a)(ii)(A) through ~~†††(a)†††(H)~~ (1)(a)(ii)(I);

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing will be conducted by the youth court without a jury;

(c) notice in writing of the time, place, and purpose

of the hearing is given to the youth, his counsel, and his parents, guardian, or custodian at least 10 days before the hearing; and

(d) the court finds upon the hearing of all relevant evidence that there is probable cause to believe that:

(i) the youth committed the delinquent act alleged;

(ii) the seriousness of the offense and the protection of the community require treatment of the youth beyond that afforded by juvenile facilities; and

(iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

(2) In transferring the matter of prosecution to the district court, the court may also consider the following factors:

(a) the sophistication and maturity of the youth, determined by consideration of his the youth's home, environmental situation, and emotional attitude and pattern of living;

(b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts will not of itself be grounds for denying the transfer.

(3) The court shall grant the motion to transfer if the youth was 16 years old or older at the time of the conduct alleged to be unlawful and the unlawful act would constitute deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult.

(4) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the youth court was waived and the case transferred to district court.

(5) The transfer terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the petition. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in this section.

(6) Upon order of the youth court transferring the case to the district court, the county attorney shall file the information against the youth without unreasonable delay.

(7) Any offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1), upon motion of the county attorney and order of the youth court judge.

(8) If a youth is found guilty in district court of any of the offenses transferred by the youth court and is sentenced to the state prison, ~~his~~ the commitment must be to the department of corrections and human services. The department shall confine the youth in whatever institution it considers proper, including a state youth correctional facility under the procedures of 52-5-111; however, no youth under 16 years of age may be confined in the state prison.

(9) A youth whose case is transferred to district court may not be detained or otherwise placed in a jail or other adult detention facility before final disposition of his case unless:

(a) alternative facilities do not provide adequate security; and

(b) the youth is kept in an area that provides physical, as well as sight and sound, separation from adults accused or convicted of criminal offenses."

Section 3. Section 45-9-101, MCA, is amended to read:

"45-9-101. Criminal sale of dangerous drugs. (1) A person commits the offense of criminal sale of dangerous drugs if he the person sells, barter, exchanges, gives away, or offers to sell, barter, exchange, or give away or

~~manufactures, prepares, cultivates, compounds, or--processes~~ any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal sale of a narcotic drug, as defined in 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(3) A person convicted of criminal sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or ~~tetrahydrocannabinols~~ tetrahydrocannabinol, who has a prior conviction for criminal sale of such a drug shall be imprisoned in the state prison for a term of not less than 10 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222. Upon a third or subsequent conviction for criminal sale of such a drug, ~~he~~ the person shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(4) A person convicted of criminal sale of dangerous drugs not otherwise provided for in subsection (2), (3), or (5) shall be imprisoned in the state prison for a term of not less than 1 year or more than life or be fined an amount

1 of not more than \$50,000, or both.

2 (5) A person who was an adult at the time of sale and
3 who is convicted of criminal sale of dangerous drugs to a
4 minor shall be sentenced as follows:

5 (a) If convicted pursuant to subsection (2), the person
6 shall be imprisoned in the state prison for not less than 4
7 years or more than life and may be fined not more than
8 \$50,000, except as provided in 46-18-222.

9 (b) If convicted of the sale of a dangerous drug
10 included in Schedule I or Schedule II pursuant to 50-32-222
11 or 50-32-224 and if previously convicted of such a sale, the
12 person shall be imprisoned in the state prison for not less
13 than 20 years or more than life and may be fined not more
14 than \$50,000, except as provided in 46-18-222.

15 (c) If convicted of the sale of a dangerous drug
16 included in Schedule I or Schedule II pursuant to 50-32-222
17 or 50-32-224 and if previously convicted of two or more such
18 sales, the person shall be imprisoned in the state prison
19 for not less than 40 years or more than life and may be
20 fined not more than \$50,000, except as provided in
21 46-18-222.

22 (d) If convicted pursuant to subsection (4), the person
23 shall be imprisoned in the state prison for not less than 2
24 years or more than life and may be fined not more than
25 \$50,000, except as provided in 46-18-222.

1 (6) Practitioners and agents under their supervision
2 acting in the course of a professional practice, as defined
3 by 50-32-101, are exempt from this section."

4 NEW SECTION. **Section 4.** Codification instruction.
5 [Section 1] is intended to be codified as an integral part
6 of Title 45, chapter 9, part 1, and the provisions of Title
7 45 apply to [section 1].

-End-